

# Thompson, of Nebraska, on the Initiative, the Referendum, and the Recall

*"That the people's judgment can be trusted has been proven to the world's satisfaction by all history, has been proven by all literature, prose and poetry, by song and by story."*

William H. Thompson of Grand Island, Neb., candidate for the democratic nomination for United States senator (primaries to be held April 19, 1912) delivered an address before the Lincoln, Neb., Bar association. Mr. Thompson's address follows:

The legal profession has ever been and must ever be the unprejudiced advocate of public questions, dealing with each without bias, and without being swayed from the path of duty by a desire of personal gain or selfish reward. By the members of this bar having assigned me this subject they have added to my confidence as to the lawyer's unselfish devotion to American progress as well as his ability and desire to deal in the open forum, where the public eye may see and the sword of censure may be applied. On the premise selected depends the intrinsic value of every deduction therefrom. One might logically reason as well from a false basis as from a true foundation; the former would be worse than valueless, it would be misleading and poisonous while the latter would be enlightening, and, inspiring deeper and broader research. Thus, if we start with the idea that the people of this government are not capable of self government, that the majority of them are at times a mob, we must of necessity arrive at a different conclusion from that which we would arrive at if we started from the premise that to secure the inalienable rights of man endowed by his Creator, governments are instituted among men, deriving their just powers from the consent of the governed. Personally I shall accept the theory, (to me an axiom) that the people in this country form the nation's only sovereign.

In the constitutional convention at Philadelphia the ending of each discussion was: Will the people approve of our act? Every question was there covered by the real fathers of our system of government that now enters into the questions of initiative and referendum, and the recall of public officers, even including members of our judiciary. In framing the constitution as to the executive, there were those who contended that he should be chosen for life, so as to be independent of the people, independent of the legislative, and independent of the judicial branch of our government; for, as they contended, to leave him in any way dependent on either, was to create such a fear of their wrath or their designs as to make him subservient to their will; and would mean to make of him a fickle, unstable nothing, and so compromise his dignity as to place him in contempt of the kingly rulers of the earth. On the other hand, it was urged that a constitution was being framed for a republic, in which the people were sovereign, and that even a term of nine years was too long, so was seven, and so was five, therefore they set it at four, in order, as they said, that if the people did not want him they would not have to wait long to dispose of him. This shortness of term being a species of recall in itself, was it not? Then they provided for his impeachment in the meantime by the other branches of the government, another safeguard as they supposed, answering what is now giving rise to the recall. They then took up the legislative branch and after a long discussion, decided that two branches thereof would be the stronger, as one would act as a check against the other. Almost without dissent they agreed that the lower branch thereof must, as was the president, be the direct choice of the voters, and so limited as to time of term that the voters might reach him quickly, if not satisfactory, and that if he sought re-election that along side by side with him might be placed another candidate, or they might in the first instance drop him entirely. They refused to fix his term for even three years, but cut it down to two; another instance of recall. Further, in the discussion as to this short term, it was said that in all but two, I think, of the states, those composing the confederate congress were elected by the legislature, reserving the right of recall as to its

representatives in this congress. That two years would make the term so short as to keep each member ever mindful of those by him represented. Then, with the right of impeachment as a further safeguard, the two years were adopted. In divining the plan as to the upper branch or senate, some there were contended that their term should be for life and that this branch should be composed of the rich only and should be either appointed or selected by the legislatures of the respective states, and by others that they should be elected for a short term without restrictions and by a popular vote. It must be remembered that the respective state legislatures had, under the confederation, the authority to elect the members of congress; this was now being taken from them. Each member of this historic convention felt that it was more than useless to submit a constitution that would not be adopted. It would be dangerous under the then conditions, so it was agreed that they must have the favorable influence of these state legislatures in the adoption of the constitution to be submitted. That these legislatures would be pleased if they still retained some power as to the national congress, so, if it could be provided that they could elect the senators or members of the upper house, this would form a compromise between those who wanted to elect them for life, those for the appointing of the rich only, and those who wanted them elected for a short term by a popular vote.

It was, therefore, as a compromise, provided that this upper branch should be elected for six years instead of life, and to this limited term there should be added the right of impeachment, and frequently the statement was openly made that this constitution must be subject to change when the people desired that changes should be made. The status of the judiciary was the most difficult of agreement. Should this branch be for life, should it have any legislative authority, should it possess any executive power, should the constitution be the pole and the supreme court the needle, steadily but truly and with exactness at all times directing the eye of all branches of the government to the constitution as establishing its fixed limitations, so that as to each other, the executive, legislative and judicial would be as to their respective spheres "as separate as the waves, yet as to the nation, one as the ocean." In the discussion the aim of some was to take this branch as far from the people as possible, to not permit impeachment by any other branch; by making its members appointed for life instead for a term of years, or good behavior; by others it was contended that they should be elected and held responsible to the people at all times; but, it was finally agreed to provide for impeachment and to make the term of incumbency during good behavior, and to make them appointed by the executive, but placing the further check that they should be confirmed by the senate. It was further understood that all power not granted to the national government by this constitution or therein prohibited to the states, was still retained in the people as sovereign. That among these retained powers was that of changes in the constitution by direct vote of the states or approval by the respective state legislatures. The initiative, referendum, and recall are but the outgrowth of our nation's experience with our republican form of government. The years have deepened the conviction that the masses can be trusted, and have the intelligent caution and conservatism that will lead them to act with wisdom as to their affairs of state. Further, from this experience they believe they need the initiative and referendum as an equalizer of the legislative departments; that the recall would act as a check against the appointment or election of undesirable public officers as well as an aid to fewer elections and longer terms for the deserving and shorter terms for the undeserving. It must be admitted by all candid persons that the judiciary stands on some different ground from that of

the other departments of our government. May we ask would the dire results follow the recall of judges that are by many anticipated? Has the making of the executive elective, has a four-year term made of him a fickle, fearing, cringing, shrinking sycophant, swayed and buffeted by his fears and not directed by his own judgment? Has he not stood out in the open, a stronger and more manly man than any king upon any kingly throne? Has he feared the impeaching powers of the other branches of the government? Has he not more often defied them than they defied him? Has not the lower branch of congress with its short term provided its stability with the upper? Has it not, in fact, been the popular branch of the government and has it not been more responsive to the sovereign will? Has the fear of impeachment had any tendency to destroy the independence of the executive, the independence of either branch of congress or the independence of the judiciary? The framers of the constitution refused a property qualification to that of a senator, turned it down by an almost unanimous vote; yet can it now be denied that demand for the election of the United States senators is not the outgrowth of repeated abuses of this principle in the selection and election of those senators by reason of their own wealth or by that of the moneyed interests? Could the history of this change of our government along this line be questioned if it was said that it showed a concerted attempt to overrule the spirit if not the letter of the constitution until this body was said to be the rich man's club? Can it be said that the people disgraced the courts, the people debauched their own fountains of power, an intelligent people, capable of self government? I assert it without fear of contradiction that every branch of our government that has at any time been held in contempt by the people that branch has gone out of the beaten path, the constitutionally beaten path and brought itself in contempt of itself as well as of the people. The popular demand for the election of senators has grown out of its own acts or rather that of members, hence the voters see that the old rule failed and say we will try the direct method. Our president has said that "this country should make its judges responsible." (I suppose, meaning to the people) "Impeach them. Impeachment of a judge would be a healthy thing in these times, I agree." I shall not tonight make so serious a charge as to this branch of our government. But must it not be an astounding condition that would call forth from the executive of this great nation such an indictment? That such a condition exists (if it does) must cause serious reflection on the part of the bar as well as on the part of every lover of his country. We have had this power of impeachment ever since the constitution was adopted, and but one judge that I know of was ever impeached, and history says he was insane at the time of his trial. Then must it not be true if the charge of our president faithfully depicts the conditions that the law of impeachment has failed to keep the bench pure and above suspicion, has the legislative election of United States senators failed to keep the property test out of the senate, and that in many instances both in state and nation, those elective by direct vote of the people have failed to respond to the people's wishes, though firmly and frankly pledged to do so before election. May this not be the reason why the initiative and referendum and the recall are now being asked for and that there is a growing demand that the latter applies as well to the judiciary as to other offices. While I, for one, do not lay the blame entirely to the fault of our system of government as much as I do to its faulty operation, to its failure to respond to the honest demands of the people. The national judiciary, if wrong, rests with the appointing power, the executive, the legislative, if wrong, rests with the people who sit idly by and let some one else do their thinking. The president should know, and does, the general trend of thought, the education, the associations, the line of sympathy and past life of every man he appoints to the bench as well as he does his own cabinet, and the decisions handed down usually square with his judgment previously had on all live questions at the time of the appointment. The leopard does not change his spots, figs do not grow on thistles, and the decisions do not come by chance. The voters might change these conditions complained of by ever watchfulness as to the conditions; they can safeguard them by closer scrutiny of those aspiring for the presidency, of those aspiring for the legislative departments, but if they have

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